

**REMARKS**

Claims 1-30 are pending in the present application.

Claims 1-30 have been rejected.

No Claims have been amended herein

Claims 1-30 remain pending in this application.

Reconsideration of the claims is respectfully requested.

**REJECTION UNDER 35 U.S.C. § 102**

Claims 1-2, 11-12, 21-22 are 26-27 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,687,901 to *Imamatsu*, (hereinafter “*Imamatsu*”). The Applicants respectfully traverse the rejection.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131, p. 2100-76 (8th ed., rev. 4, October 2005) (*citing In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. *Id.* (*citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

The Applicants direct the Examiner's attention to independent Claim 1, which includes the novel and non-obvious limitations emphasized below:

1. A wireless communication device capable of downloading a software update file from a wireless network, said wireless communication device comprising:

a non-volatile memory capable of being re-programmed by sectors, wherein said non-volatile memory stores: 1) a target file to be updated, 2) said downloaded software update file, and 3) a journal comprising a plurality of entries, each of said plurality of entries containing status information associated with a re-programmed sector of said non-volatile memory;

a random access memory; and

a main processor capable of replacing target code in said target file with replacement code from said downloaded software update file, wherein said main processor creates a first block of replacement code in said random access memory and re-programs a first target sector of said non-volatile memory by storing said first block of replacement code into said first target sector, and wherein said main processor updates first status information in a first entry in said journal associated with said first target sector. (*Emphasis added*).

That is, Claim 1 recites a wireless communication device that replaces target code by creating replacement code in random access memory (RAM) and reprogramming target code by copying the replacement code from RAM. The Applicants respectfully submit that Imamatsu fails to teach, suggest or even hint at the novel and non-obvious limitations recited in Claim 1.

Imamatsu describes a method for updating software in a radio terminal device of a mobile communication system, where new control software is downloaded to the radio terminal device from a software-supply device. *See Imamatsu, Abstract.* Non-volatile flash read-only memory (ROM) includes both control software for the radio terminal device and a download buffer into which new control software is loaded. *See Imamatsu, Fig. 4A, col. 6, lines 23-26 and 62-64.* Sectors of current control software in one part of the flash ROM are overwritten with sectors of new control software

from the download buffer in another part of the flash ROM. *See Imamatsu, col. 11, line 64, through col. 12, line 6.*

Thus, Imamatsu describes replacing control software in one block of non-volatile memory with replacement software downloaded into another block of non-volatile memory. In contrast, Claim 1 recites creating replacement code in RAM from a downloaded software update file stored in non-volatile memory and reprogramming a target file in non-volatile memory by storing the replacement code from RAM into the target file in non-volatile memory.

For these reasons, independent Claim 1 is patentable over Imamatsu. Claim 2 depends from Claim 1 and includes limitations of Claim 1. As such, Claim 2 also is patentable over Imamatsu. Independent Claims 11, 21 and 26 recite analogous limitations to the novel and non-obvious limitations of Claim 1 and, therefore, also are patentable over Imamatsu. Claims 12, 22 and 27 depend from Claims 11, 21 and 26, respectively, and include all the limitations of their respective base claims. Therefore, Claims 12, 22 and 27 also are patentable over Imamatsu.

### REJECTION UNDER 35 U.S.C. § 103

Claims 3-10, 13-20, 23-25, 28-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Imamatsu in view of U.S. Patent No. 6,928,579 to Äijä, (hereinafter “Äijä”). The Applicant respectfully traverses the rejection.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a prima facie case of obviousness. MPEP § 2142, p. 2100-133 (8th ed. rev. 4, October

2005). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

Claims 3-10 depend from Claim 1 and include all the limitations of independent Claim 1. As argued with regard to the § 102 rejection of Claim 1, Imamatsu fails to describe replacing target code in a wireless communication device by creating replacement code in random access memory (RAM) and reprogramming target code in non-volatile memory by copying the replacement code from RAM onto the target code in non-volatile memory, as recited in Claim 1. The Applicants respectfully submit that Äijä does nothing to overcome this shortcoming of Imamatsu. Therefore, the combination of Imamatsu and Äijä fails to teach or suggest all the limitations of Claims 3-10 and Claims 3-10 are therefore patentable over Imamatsu, Äijä and the combination of Imamatsu and Äijä.

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Furthermore, Claims 13-20, 23-25, 28-30 depend from independent Claims 11, 21 and 26, respectively, and include all the limitations of their respective base claims. As such, Claims 13-20, 23-25, 28-30 are patentable over Imamatsu, Äijä and the combination of Imamatsu and Äijä.

**SUMMARY**

For the reasons given above, the Applicant respectfully requests reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at [jmockler@munckbutrus.com](mailto:jmockler@munckbutrus.com).

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK BUTRUS, P.C.

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P.O. Drawer 800889  
Dallas, Texas 75380  
Phone: (972) 628-3600  
Fax: (972) 628-3616  
E-mail: [jmockler@munckbutrus.com](mailto:jmockler@munckbutrus.com)

John T. Mockler  
John T. Mockler  
Registration No. 39,775